IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5168 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMANBHAI B CHELANI

Versus

UNION OF INDIA

Appearance:

MR MH RATHOD for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/03/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the communication dated 14.7.1999 (Annexure "I" to the petition) rejecting the petitioner's application for referring the dispute against telephone bills to arbitration under Section 7B of the Indian Telegraph Act,

1885.

2. The petitioner is a telephone subscriber having telephone Nos. 54044 and 56544. The petitioner received telephone bill for the month of December, 1997 for an amount of Rs.24,167/- in respect of telephone No. 54044 and also bill for the month of November, 1997 for an amount of Rs.7,319/- in respect of telephone No. 56544. The petitioner lodged complaint against the said bills as being excessive. The respondents ultimately called upon the petitioner to pay Rs.29,609/- by 20.2.1998 or else face disconnection of telephones. The petitioner filed Regular Civil Suit No. 43/98 in the Court of the learned Civil Judge (S.D.), Palanpur for challenging the aforesaid bills and also prayed for temporary injunction against disconnection. In the said suit, the telecom department filed an application Exh. 52 praying that the Civil Court had no jurisdiction to entertain the suit in view of the provisions of Section 7B of the Indian Telegraph Act and that, therefore, the issue regarding jurisdiction may be raised as a preliminary issue. In view of the above purshis, the petitioner filed application Exh. 69 on 19.6.1999 for permission to withdraw the suit with a view to filing an application for raising the dispute before the arbitrator. Accordingly, the suit was permitted to be withdrawn on 3.7.1999. The petitioner thereafter made an application dated 9.7.1999 before the Telecom District Manager, Palanpur for referring the dispute before the arbitrator-the dispute regarding telephone Nos. 54044 and 56544 in respect of the bills for the months of November, December, 1997 and January, 1998. However, by the impugned reply dated 14.7.1999, the Accounts Officer of the General Manager, Telecom District, Palanpur rejected the petitioner's application on the ground that there was no dispute concerning the apparatus or appliance. It is the aforesaid communication which is under challenge in this petition.

3. At the hearing of this petition, the learned counsel for the petitioner has submitted that respondent No. 3 has erred in not exercising the jurisdiction vested in him as the dispute raised by the petitioner pertains to excessive bills in respect of the two telephone numbers for which the lines as well as the instruments were supplied by the department. The learned counsel has further relied on the following decisions :-

1. Union of India vs. M/s Usha Spg. and Wvg. Mills Ltd., AIR 1982 Del. 111
2. Dr. J.N. Sheth vs. Union of India, AIR

1991 MP 180

3. V.S. Dempo & Co. Ltd. vs. Telecom District Manager, Goa, AIR 1995 Bom. 428

4. On the other hand, Ms Davawala, learned Addl. Standing Counsel appearing for the respondents has submitted that arbitration under Section 7B of the Indian Telegraph Act, 1885 is to be provided only where the dispute concerns any telegraph line, appliance or apparatus and not in respect of the telephone bill and that, therefore, respondent No. 3 was justified in sending the impugned communication.

5. Before considering the rival contentions, it is necessary to set out the provisions of Section 7B of the Indian Telegraph Act, 1885 which read as under :-

> "7B. Arbitration of disputes.- (1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section.
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> (2) The award of the arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court."

6. Although at the first blush the contention urged on behalf of the respondents may seem attractive, the words "if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided" have been interpreted by as many as three High Courts, all of which have taken the view that the words are of wide amplitude and will take within their sweep all kinds of disputes which relate to the functioning and working of any telegraph line, apparatus or appliance and the moment the correctness of the bill is challenged on the ground of mal-functioning or misuser of the lines, the dispute concerning the telegraph line, apparatus or appliance within the meaning of Section 7B will spring up. It is

further held that at any rate when the telephone connection is sought to be cut off in exercise of power conferred by Rule 443 and it is resisted on the ground that the Department itself is to be blamed for the faulty operation and functioning of the telephone, the dispute cannot be said to be one outside the purview of Section 7B. It is further pertinent to note that in case of V.S. Dempo & Co. Ltd. (Supra), the Bombay High Court had an occasion to consider the Department circular dated 13.4.1989 providing that only in special circumstances the head of the Department has to recommend for the appointment of an arbitrator. The circular was held to be illegal and violative of Section 7B as well as inconsistent with Rules and statutory instructions issued by the Department, in view of the mandatory nature of the obligation cast upon the Department to refer the matter to arbitration whenever there is a complaint of overbilling.

7. This Court sees no reason not to adopt the view which has commended to all the aforesaid three High Courts. The very purpose of providing arbitration would be frustrated if the narrow view advanced by the department were to be accepted.

8. In view of the above, the petition deserves to be allowed and is allowed. The respondents shall appoint an arbitrator for determining the disputes raised by the petitioner in his application dated 9.7.1999 at Annexure "G" to the petition as expeditiously as possible and in any case within two months from the date of receipt of a certified copy of this order. Since the delay in reference being made to the arbitrator is on account of the stand adopted by the department, there is some substance in the request being made by Mr Mehul Rathod for the petitioner that till the dispute is referred to the arbitrator and till the same is decided, the respondents may be restrained from disconnecting the telephone connections in question.

9. On the other hand, Ms Davawala, learned counsel for the department submits that the petitioner has so far deposited only 10% of the disputed bill amount and, therefore, the balance amount may be required to be deposited subject to the right of assessment depending on the outcome of the arbitration proceedings.

10. In the facts and circumstances of the case, it is directed that the ad-interim relief granted earlier in this proceeding shall continue till the dispute is decided by the arbitrator subject to the condition that

the petitioner deposits a further amount of Rs.10,000/- (Rupees Ten thousand only) within two weeks from today, against the disputed bills over and above the amount earlier deposited by the petitioner against the disputed bills which are the subject matter of this petition.

Rule is made to the aforesaid extent with no order as to costs.

March 27, 2000 (M.S. Shah, J.)
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